IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2641 OF 2004

Dr. Ram Chandra Dhingra ...Applicant.

V/s

Dr. B.M. Sethna and anr. ...Respondents.

--

Mr. Jahangir Khajotia for the applicant.
Mr. Ashokwanwari for respondent No.1.
Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 20th April, 2005

P.C.:

1. Heard the learned counsel for the petitioner

2. Petitioner is challenging the order of issuance of process passed by the Metropolitan Magistrate, 37th Court at Esplanade, Mumbai in Criminal Case No. 889/S/1996 filed by respondent No.1 under section 630 of the Indian Companies Act read with section 408 of the Indian Penal Code.

3. It is the case of the petitioner that he was the Residential Medical Officer of the Nursing Home which was managed by respondent No.1. It is the case of the petitioner that he was working in the said capacity since 1981 and was allotted Doctor's Quarters on the 4th floor of the Hospital Building. An inquiry was held against the petitioner by the Managing Committee

of the Board on the grounds of misconduct and on the basis of evidence collected during the course of inquiry, the Office who had conducted the inquiry held that the petitioner had committed misconduct levelled against him in the charge sheet. The Board of Directors in view of the report of the Inquiry Officer, terminated the services of the petitioner by issuing a letter dated 4/7/1986. Thereafter, he was informed by letter dated 4/7/1996 to vacate the quarters. Since the petitioner did not vacate the quarters, a complaint under section 630 of the Companies Act read with section 408 of the Indian Penal code was filed and the learned Magistrate was pleased to issue process against the present petitioner. The petitioner had filed an application for recalling of the process. However, the said application was withdrawn in view of the judgment of the Supreme Court in the case of Adalat Prasad and, thereafter, the present writ petition has been filed.

4. It is submitted by the learned counsel appearing on behalf of the petitioner that the averments made in the complaint, even if they are taken at their face value, do not make out a case which would fall within the ambit of section 630 of the Companies Act or section 408 of the Indian Penal Code. It is further

submitted that the letter of termination dated 4/7/1996 itself was illegal on the ground that it was clearly mentioned in the termination letter that "if at all you are held to be workman then you are hereby terminated from your services with immediate effect". It is submitted that the petitioner has not been declared as workman by any competent court and, therefore, his termination is illegal. It is further submitted that his dues were not paid by respondent No.1 and, therefore, as long as the said amount was not paid, as per the terms of the contract, he was entitled to occupy the premises. The learned counsel for the petitioner relied on clause 6(b) of the Service Contract in which it is mentioned that Nursing Home would have right to terminate the services of the employee by giving compensation equal to the balance period of the contract as a salary in lieu of notice without assigning any reason. It is submitted that since this was not done, the order of termination was in breach of clause 6(b) of the Contract. It is submitted that his application under Unfair Labour Practices Act was pending.

5. The learned Counsel appearing on behalf of respondent No.1 vehemently opposed the said submissions. He submitted that the present petition

is filed only to protract the litigation. It is submitted that the matter in the trial court is ready for final hearing and the plea of the petitioner is already recorded and the evidence of respondent No.1 also has been completed.

6. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicant. I have perused the copy of the complaint filed by respondent No.1. In my view, trial court was justified in issuing the process against the petitioner as prima facie case has been made out by the complainant in the complaint. It is open for the petitioner to lead evidence and to prove his submissions which are made by his counsel in this Court. All the issues raised by the petitioner are, in substance, factual aspects which will have to be decided by the trial court.

7. Criminal Writ Petition is accordingly dismissed.

Hearing of the Criminal Case is expedited.

V.M. KANADE, J.